

# **EXHIBIT B**

## **(Part I)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COPY

TINA LINDQUIST, )

Plaintiff, )

vs. )

No. 04-249E

HEIM, L.P., )

Defendants. )

The video deposition of RALPH L. BARNETT,  
called for examination pursuant to the Rules of  
Civil Procedure for the United States District  
Courts pertaining to the taking of depositions,  
taken before Patricia L. Wangler, a notary  
public within and for the County of DuPage and  
State of Illinois, at 33 North LaSalle Street,  
Illinois, on the 6th day of April, 2006, at the  
hour of 12:00 o'clock p.m.

Reported By: Patricia L. Wangler, CSR

License No.: 084-002417

1 points today as well as some other documents  
2 that I will show to you. I want to see if I can  
3 state the gist of your opinion --

4 A. All right.

5 Q. -- so that we can have a working  
6 knowledge of what that is. Is it your opinion  
7 that the foot control that was being used by  
8 Tina Lindquist at the time of her injury was  
9 defective because it did not have a gate on the  
10 front of the foot control?

11 A. I think that's a complete statement of  
12 the -- of my opinion.

13 Q. In reviewing your report I didn't  
14 notice any other areas of defect that you were  
15 claiming other than the one I just stated.

16 A. That's correct, but it is -- with the  
17 only thing I would add to that is that I want  
18 the same footswitch that was involved in this  
19 accident with the addition of the gate because  
20 Linemaster makes the -- everything else should  
21 be there and the gate also should be -- you  
22 know, should be added, and that's part of the  
23 testing I did was with the full -- with the  
24 Linemaster switch with the gate on it.

1 Q. So is it fair to say that the opinion,  
2 the only opinion that you have expressed so far  
3 in your report and the only opinion that you  
4 intend to express to a jury and to the court  
5 would be the one that I just stated relative to  
6 the foot control that was being used by Tina  
7 Lindquist being defective because it did not  
8 have a gate on the front of it?

9 A. Right, and whatever ancillary things  
10 support that, you know, the -- support that  
11 opinion.

12 Q. And I want to make sure I understand --

13 A. Because I have done testing and I would  
14 want to show them the testing, but it is all  
15 based on that one conclusion.

16 Q. So you are saying that there are other  
17 facts --

18 A. Yes.

19 Q. -- that you have gleaned that support  
20 that opinion, that there is testing that you  
21 have performed that supports that opinion. Is  
22 there anything else that is ancillary that  
23 supports that opinion?

24 And I want to make sure I include your

20

1 on roof crushing, but I can't take a case  
2 against tires. That's how the engineer code of  
3 ethics works.

4 Q. Do you know of any press brake  
5 manufacturers that you have been adverse to  
6 because of your involvement on behalf of a  
7 plaintiff?

8 A. I just haven't got the memory of --  
9 there is a number of foreign machines that I  
10 have not represented and so I have -- I think  
11 Dearco is a plaintiff's case, against Dearco, I  
12 think Wieson and Myles is a plaintiff's case  
13 against the manufacturer, there is a German  
14 company M-U-H-E, and then O-N-D, Bender and  
15 Machine, and that's a plaintiff's case against  
16 them. I think the YMG case is against that  
17 company, so the --

18 Q. Those are the single cases I think you  
19 are pointing out from your list?

20 A. Yes, exactly.

21 Q. So there are 4 there of the 111?

22 A. Right.

23 Q. Have you ever represented a plaintiff  
24 in a case adverse to an American manufacturer of

1 press brakes?

2 A. I just -- I don't remember. I don't  
3 remember.

4 Q. You can't think of any today?

5 A. Right, I would have to really look at  
6 that to see.

7 Q. Would you have any records available to  
8 you? When you say I have to look at it, do you  
9 just assume there are records?

10 A. Well, I have to talk to the project  
11 engineers and see what they remember because I  
12 don't have this computerized, this is not  
13 computerized.

14 Q. And I am just trying to learn how it  
15 would be that you would go about doing such a  
16 thing.

17 A. Right. At one time we were going to  
18 put together a system like this and it was  
19 \$2 1/2 million to put that together and it is  
20 \$2 1/2 million that doesn't serve any real  
21 purpose except to make defense and plaintiff's  
22 attorneys happy at depositions of this kind.

23 Q. What was 2 1/2 million?

24 A. 2 1/2 million to put together my work

1 so that you could go ahead and answer questions,  
2 what was the plaintiffs, what were the defense,  
3 what was your position on the cases, who can  
4 you -- you know, that sort of strategic  
5 information.

6 Q. Did you get more than one quote on that  
7 number?

8 A. It was from Beth Hamilton who did the  
9 work and said, you have to be kidding. You  
10 know, the -- and said it is \$2 1/2 million to  
11 do this.

12 Q. Did you get more than one quote?

13 A. No, that's from my head librarian at  
14 that time.

15 Q. Is she still with you?

16 A. She is not with any of us.

17 Q. Yeah, okay.

18 Have you also represented foot control  
19 manufacturers?

20 A. Oh, yes.

21 Q. And can you list for us. I have seen a  
22 list. I could probably go through it and  
23 make -- see -- let's do it that way.

24 A. I can could try and help you.

1 Linemaster, you know, Allen-Bradley, Reese,  
2 Square D, the -- those are ones that I can  
3 remember now.

4 Q. Clark Controller?

5 A. What's that again?

6 Q. Clark Controller?

7 A. Absolutely.

8 Q. Allen-Bradley, Linemaster, Clark  
9 Controller, Square D, Reese, anyone else?

10 A. I am sure there is others, but that's  
11 what I can think of.

12 Q. If you think of any today, feel free if  
13 it pops into your mind to let me know.

14 A. I will do that, I will do that.

15 Q. Have you ever represented a plaintiff  
16 adverse, similar question as I did with the  
17 press brakes, adverse to a foot control  
18 manufacturer?

19 A. I don't really recall, a plaintiff  
20 against a switch manufacturer.

21 Q. Do you call them footswitches or foot  
22 controls?

23 A. I call them both, but the standard for  
24 press brakes call the switches that are electric

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1 and pneumatic, they call them foot controls, and  
2 then there is foot pedals, you know, that  
3 they --

4 Q. Treadles?

5 A. -- which we call pedals for mechanical,  
6 and treadles is another mechanical, but they are  
7 really long bars in front of the machine as  
8 opposed to a thing that's about the size of your  
9 shoe.

10 Q. What do you call the device that you  
11 believe Tina Lindquist was using at the time of  
12 her injury?

13 A. That would be a foot control.

14 Q. I want to make sure I have the -- we  
15 use the same terminology because as you point  
16 out, there are differences depending upon which  
17 term you use; right?

18 A. Absolutely. And you will have to watch  
19 me because the formalism imposed by standards  
20 has -- is -- does not mean the entire industry  
21 calls everything by the same -- by the same  
22 names.

23 Q. In this case alone I have heard many,  
24 many different terminology used.

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1           A.    Right, foot actuating devices, and we  
2    have a whole group of things, but so that the  
3    jury can follow what we are dealing with, you  
4    and I will do our best to try to call things by  
5    one name that everybody is using so as not to  
6    confuse anybody more than we have to.

7           Q.    Right, I appreciate that.

8                   Have you ever in the -- just to  
9    complete I guess the similar types of questions,  
10   how many cases do you estimate, sir, that you  
11   have handled on behalf of the foot control  
12   industry?

13                   You mentioned the companies involved  
14   now, the similar question with the 111 and the  
15   press brakes, how many times have you defended  
16   foot controls?

17           A.    I didn't make an attempt to find that  
18   out. I just looked at punch presses, you know,  
19   mechanical presses and press brakes is all I  
20   looked at, but I don't know.

21           Q.    Give it to me this way then, for  
22   Allen-Bradley give me a minimum number that you  
23   know that you represented them on.

24           A.    A dozen.

1 Q. And when I say represented them on, I  
2 am referring to performed any work, not  
3 necessarily been deposed but been retained.

4 A. Yes, certainly a dozen.

5 Q. Linemaster?

6 A. I would also guess a dozen.

7 Q. Clark Controller?

8 A. I would think that would be a  
9 half a dozen.

10 Q. Square D?

11 A. I would guess a half a dozen.

12 Q. Do you know Norm Wetlan (phonetic)?

13 A. I know who he is.

14 Q. How about Reese?

15 A. Reese, I think it is about -- also  
16 about a half a dozen, maybe four.

17 Q. Roughly I have 42, over --

18 A. Oh, sure.

19 Q. Do you feel very comfortable?

20 A. Oh, absolutely.

21 Q. Have you represented foot control  
22 manufacturers against claims of defects with  
23 those foot controls where the foot control at  
24 issue did not have a gate on the front?

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1 A. Oh, certainly, certainly.

2 Q. And how many times would that be  
3 approximately?

4 A. I don't know. I have no way of  
5 knowing.

6 Q. Do you recall maybe the converse, how  
7 many times of those 40 plus you represented a  
8 foot control manufacturer where there was a  
9 gate?

10 A. Well, I think in almost every  
11 Allen-Bradley case there was a gate, so I  
12 represented, you know, because of the mousetrap  
13 design. I have represented a lot of people with  
14 the gate.

15 But my position -- see, I have a  
16 position that doesn't allow -- that doesn't hold  
17 a footswitch manufacturer responsible for  
18 selecting the right footswitch for a piece of  
19 machinery.

20 Q. What do you mean by that?

21 A. Well, what happens is is that somebody  
22 will have a piece of machinery and blame a  
23 footswitch manufacturer for furnishing the wrong  
24 footswitch for that machine. And it turns out

1 the footswitch manufacturers have absolutely no  
2 idea what it is that they have to do for a  
3 particular machine. It is completely outside of  
4 their purview. And so what I have done is  
5 represented what those manufacturers do, the  
6 menu that they provide and that it is the  
7 responsibility of the machine manufacturers to  
8 select from their menu those footswitches --  
9 footswitches or foot controls or foot pedals or  
10 foot treadles which are -- you know, which makes  
11 some sense for their machine.

12 It is a drop forge, you know, if it is  
13 a sewing machine, if it is a press brake or a --  
14 a punch press, all of these things require  
15 different kinds of switches or pedals or foot  
16 controls depending on what it is.

17 And there is not a chance -- you know,  
18 when -- Allen-Bradley is one of the largest  
19 manufacturers of electrical devices in this  
20 country, you know. I met with their staff and  
21 so many occasions that, you know, I can't even  
22 bring to tell you. And that's just a joke, they  
23 have not a clue what kind of a foot, you know,  
24 control, that they shouldn't send out for a

1 given machine. That's why they retain me.

2 Q. Is part of that reason because it  
3 depends on what type of use is being put to that  
4 machine?

5 A. Exactly, but it is more than that, is  
6 that they are experts on the manufacturer of  
7 foot controls. They are not experts on every  
8 machine that we have extent in the  
9 United States, you see, so they just don't have  
10 the expertise to do a power press, the expertise  
11 to do a press brake, the expertise to do a  
12 sewing machine.

13 They don't know how you are going to  
14 use, what the machines -- how you are going to  
15 use the machines and what are the requirements  
16 for every machine.

17 And there are -- it's really amazing.  
18 I have -- you know, if I show you a foot control  
19 that has absolutely no guard on it at all, and I  
20 will show you it is the optimum control because  
21 it is used for an emergency stop, you want to be  
22 able to hit it from every direction, sort of  
23 like the control we use in San Francisco on  
24 those -- the streetcars where a man is clanging,

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1 he keeps hitting the control, you know, as a  
2 clanging thing, he wants to be able to hit it  
3 from every direction, you don't put a cover on  
4 such a control, you want him to be able to get  
5 to it.

6 And if you use that, for example, in a  
7 punch press operation, it would be the most  
8 dreadful control in the world. The -- it  
9 depends on what you are trying to do.

10 Q. What -- can you give me a percentage of  
11 the number of cases that -- of the ones where  
12 you have represented the foot control industry,  
13 the number of cases that would include a gate,  
14 the number of cases that would not involve a  
15 gate?

16 A. I have no idea.

17 Q. I take it from what you are saying that  
18 you have claimed in your representation of the  
19 injury that --

20 A. Excuse me, I do have an idea.

21 Q. Great.

22 A. In almost every case that I have had  
23 against the foot control people every one of  
24 them wants the mousetrap device. I don't care

1 press to some extent?

2 A. No question about it, no question about  
3 it.

4 Q. Do you know if Tina Lindquist was  
5 riding the pedal at the time?

6 A. I know that she wasn't riding the  
7 pedal.

8 Q. And how do you know that?

9 A. It is because the machine has a single  
10 stroke capability.

11 Q. I don't follow what -- your  
12 explanation. Describe it more for the court  
13 please.

14 A. This particular pedal, the one that was  
15 used at the time of the accident has got a  
16 locking plate in the back and the machine has a  
17 single stroke capability, so that means if you  
18 push down on the pedal, you get one stroke and  
19 only one stroke and you will never get another  
20 stroke on this machine until you fully lift your  
21 foot off the pedal at which point it locks.

22 Q. Even if you have the locking plate  
23 pushed back while you depress the pedal?

24 A. When you push the -- when you push down



1           A.    So you do have to lift your foot up all  
2   the way, you see. And when you do that, it  
3   locks into place. This has got a device on it  
4   which really is one of the best things that ever  
5   happened in terms of the so what.

6                See, it has nothing to do with riding  
7   the pedal anymore. It is riding the pedal, so  
8   what, there is a device that protects you.

9           Q.    Do any of the manufacturers have you  
10  called them locking plates, is that the same  
11  thing as a kick plate?

12          A.    The kick plate, that's what we are  
13  talking about, only Linemaster.

14          Q.    Do the manufacturers have -- do any of  
15  them have lock plates and gates?

16          A.    Sure, Linemaster. Linemaster is the  
17  only one that I know of commercially. Your  
18  expert Switalski has also mentioned that to you.  
19  That's the only one we are aware of that has the  
20  kick plate. Somebody patented it, you know,  
21  even before Linemaster, but the only one that I  
22  know that manufactures a unit with this locking  
23  plate is Linemaster.

24          Q.    Is the locking plate a good thing?

1 A. It is a wonderful thing.

2 Q. Is it an enhanced safety feature?

3 A. It is an enhanced safety feature.

4 Q. What safety features -- I have heard  
5 different -- I have read I suppose and heard  
6 different people refer to various features as  
7 safety features?

8 A. Yes.

9 Q. What safety features in your opinion  
10 existed on the foot control that Tina Lindquist  
11 was using at the time of her incident?

12 A. She had a guard on the top, she had a  
13 guard on both sides, she had a locking plate in  
14 the back. She had an orange color, and those  
15 are the features that she had.

16 Q. How about warnings on the foot control,  
17 are those considered safety features in your  
18 opinion?

19 A. Well --

20 Q. And I don't --

21 A. -- they are considered to be safety  
22 features. They are useless, you know, the -- in  
23 terms of operational, you know, operational  
24 problems because it goes like this, there are

1 Q. How did you determine that the one she  
2 was using had a kick plate or a locking plate?

3 A. I saw a picture of it.

4 Q. And can you show us that?

5 A. I think so.

6 Q. Great. You have given me three --

7 MR. HARTMAN: No, that's --

8 MR. ROBINSON: Mr. Hartman, let's not do  
9 that. I am asking some questions here of this  
10 witness.

11 MR. HARTMAN: Well, don't confuse him with  
12 the one from the office. That's crazy.

13 MR. ROBINSON: Mr. Hartman, your comments  
14 are sanctionable. They are unprofessional.

15 MR. HARTMAN: Do what you have you have to  
16 do, Paul.

17 MR. ROBINSON: And why don't you be quiet  
18 over there while I conduct the discovery  
19 deposition. You are being very inappropriate.  
20 You are going to be sanctioned.

21 MR. HARTMAN: Paul, I am going to represent  
22 my client as I see fit. If you believe what I  
23 do is sanctionable, there is nothing to put on  
24 the record. Just go do it.

1 photographs.

2 The second photograph I know all about.  
3 This photograph is in my file shows the kind of  
4 switch that I am familiar with and the type that  
5 would have been on the machine. I don't know  
6 its origin.

7 Q. Looking at -- please just bear with me,  
8 Professor Barnett. Looking at Barnett  
9 Exhibit A, have you ever had any discussions  
10 with Mr. Hartman as to what these photographs  
11 show?

12 A. I have already answered that, nobody  
13 has ever --

14 Q. Please.

15 A. -- made any representation to me about  
16 those photographs.

17 Q. I said have you had any discussion with  
18 Mr. Hartman about what these photographs show?

19 A. No.

20 Q. Do you have -- do you know how they  
21 came into your file?

22 A. No.

23 Q. Have you ever seen them before today?

24 A. Sure, I have seen them before. They

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1 BY MR. ROBINSON:

2 Q. Has anyone represented to you that the  
3 foot control shown in Photograph 29 is the foot  
4 control that was being used by Tina Lindquist at  
5 the time of her injury?

6 A. This is what Mr. Hartman represented to  
7 me.

8 Q. Has anyone else besides Mr. Hartman  
9 represented that to you?

10 A. No.

11 Q. And Mr. Hartman has the machine, the  
12 press brake now?

13 A. Yes, he has it in the plant someplace  
14 that he showed to me.

15 Q. And the foot control is missing?

16 A. That's correct.

17 Q. Are you able to tell by looking at  
18 these photographs with certainty who the  
19 manufacturer of this foot control is that's  
20 shown in Photograph 29 and 30?

21 A. It -- I think that it's -- I don't know  
22 what certainty means.

23 Q. Certainty --

24 A. As an expert, you know, it looks like a

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1 Linemaster and the -- I have a lot of experience  
2 with that. Has somebody copied the Linemaster  
3 so that it is a fake Linemaster? That's always  
4 a possibility, but, you know, the likelihood as  
5 far as I am concerned is that it is a  
6 Linemaster.

7 Q. I understand what you are saying. You  
8 have no way to confirm whether or not it is a  
9 copy --

10 A. Right.

11 Q. -- or some other manufacturer's; is  
12 that right?

13 A. That's right.

14 Q. What color is the housing of the foot  
15 control shown in this -- these photographs, 29  
16 and 30?

17 A. I consider it to be orange.

18 Q. Do you know that Tina Lindquist has  
19 indicated she believes she was using a yellow  
20 foot control at the time of her incident?

21 A. I heard that, but you have to  
22 understand who I am. I am a person who says  
23 something is orange and my wife will say, you  
24 are not right, it is burnt something or it is a

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1 they have supplied with their foot controls?

2 A. I don't think I can answer it. I don't  
3 know one way or the other.

4 Q. Okay. Do you have any way of  
5 confirming whether or not the cord that is shown  
6 in Photographs 29 and 30 were the cord that  
7 accompanied the sale of the press brake back in  
8 1978?

9 A. I have no way of knowing.

10 Q. Do you have any way of knowing if the  
11 foot control that is shown in Photographs 29 and  
12 30 accompanied the sale of the press brake back  
13 in 1978?

14 A. All I can tell you is that this is the  
15 type of footswitch that I am familiar with that  
16 would have accompanied the unit, but I can't  
17 tell you that it was the -- it was the  
18 footswitch that came with it.

19 I can simply tell you that it is  
20 exactly the kind that I have seen on that  
21 vintage press brake by Heim and -- in the past.

22 Q. Let me make sure I understand what you  
23 are saying, repeat for the court what you have  
24 just said please.

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1 A. I have no recollection.

2 Q. You only recall the foot control  
3 itself?

4 A. Yes.

5 Q. Do many foot controls look alike?

6 A. I think that the Linemaster has gone to  
7 a lot of trouble to distinguish their controls  
8 so that they are identifiable just by glancing  
9 at them. And, remember, these are all my  
10 clients, the foot control people are all my  
11 clients so I have a special tendency to pay  
12 attention to things like this but not the cords.

13 What I like is when I see a yellow cord  
14 or a colorful cord, I, of course, am thrilled  
15 because slip and fall is the second largest  
16 producer of death and disabling injury in the  
17 world every single year, and falling over these  
18 cords is a real problem. I love to see a  
19 colorful cord.

20 Q. The -- what's the model number of the  
21 Linemaster foot control with a lock plate?

22 A. I haven't a clue. That was done by  
23 Ulmenstein. The -- and I have not looked at --  
24 I mean I have the catalogues listed in the



1 A. Absolutely correct.

2 Q. Okay. You made a statement that what  
3 you have seen is that Heim doesn't have a clue,  
4 I think was your terminology, as to what model  
5 of foot control accompanied the sale of its  
6 press brake in 1978; is that right?

7 A. Yes.

8 Q. How do you know they didn't sell one --  
9 that they didn't supply their press brake with a  
10 gate that you are claiming is the only reason of  
11 defect?

12 A. Exactly why I made all the inquiries  
13 from Mr. Hartman. I said you know that if they  
14 supplied one with a gate, I can't be an expert  
15 for you because I would have approved of that.

16 Q. Yeah.

17 A. And so all of my efforts to find out  
18 what they have supplied, you know, have failed,  
19 and I fault them for this. I don't like the  
20 idea that they don't -- you have a manual, the  
21 manual should have in the manual a list, a parts  
22 list so that if somebody breaks something and  
23 they want to replace it, you have a fighting  
24 chance to replace it with the correct thing that

1 you design.

2 This manual doesn't have a parts list.

3 I never had a case like this where the  
4 manufacturer couldn't tell me what the equipment  
5 was that went with the machine. This is the  
6 first case I have ever had like this in 32,000  
7 cases.

8 Q. So you are just assuming in your  
9 opinion then that it, one, did not have a gate,  
10 and we don't have any way of disproving or  
11 proving that; right?

12 A. Right.

13 Q. And you are assuming that it had a kick  
14 plate because the model that she was using had a  
15 kick plate and we don't have any way to prove or  
16 disprove that?

17 A. Well, I have more.

18 Q. Is that accurate what I said so far?

19 A. But there is more.

20 Q. Go ahead.

21 A. First of all, it has to do with  
22 inductive inference, that every machine that I  
23 saw in the 70 -- in the '76, '75, '80, all had  
24 the Linemaster, every one I ever seen by Heim

1 has had a Linemaster and the Linemasters that  
2 they had in the late 70's all had this, this  
3 locking plate to the back.

4 In the -- when OSHA first came out in,  
5 '70, '71, '72, they used Linemaster, but they  
6 did not have a kick plate. So I have my own  
7 inductive inference that I am using. I have  
8 seen pictures that somebody has represented to  
9 me that this is the accident unit, the accident  
10 unit looks like it has all the elements that I  
11 am familiar with, with the machine.

12 I know from the catalogues that this  
13 kick plate was available at the time of the '78  
14 sale. There is no question that, you know, that  
15 it was available and much before that the -- and  
16 I have at least the statement from the  
17 manufacturer that one of their principle  
18 suppliers was Linemaster. That's what I have.

19 Q. Linemaster sells the 532 model that you  
20 have indicated in your report was included with  
21 the sale of this press brake in 1978; is that  
22 true?

23 A. I can't -- I am having difficulty with  
24 models because, you know, first of all, there is

1 a mixup in our report on model numbers, and I  
2 don't actually work with model numbers.

3 Q. Where is your report?

4 A. It should be in here. I made it  
5 disappear somehow. Here it is.

6 Q. Is this a copy of your report?

7 A. Yes.

8 Q. This right here?

9 A. Yes.

10 MR. ROBINSON: Let's mark that as Exhibit C  
11 please.

12 (Whereupon, Barnett Deposition  
13 Exhibit C was marked for  
14 identification.)

15 BY MR. ROBINSON:

16 Q. There are some handwritten notations on  
17 here?

18 A. Yes.

19 Q. And correct me if I read this wrong, on  
20 Page 2 it has a bracket and it says, "Insert how  
21 model number was named in error."

22 A. Right.

23 Q. When was that written?

24 A. That was written by -- by

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1 Mr. Ulmenstein, and I don't know when he wrote  
2 that in.

3 Q. You don't know when he wrote that in?

4 A. No.

5 Q. When is the first time you saw that?

6 A. I think probably last night. I simply  
7 asked for a copy of the -- of the -- of the --  
8 my report so that I could study it last night,  
9 and I got Appendix A, Appendix B and this copy  
10 that you have in front of you.

11 Q. And do you know that Mr. Ulmenstein had  
12 spoken with Mr. Hartman about this before he  
13 told you to insert this?

14 A. No, I don't know one way or the other.

15 Q. Have you ever talked with Mr. Hartman  
16 about changing this reference to the Model 532  
17 as being supplied with the press brake?

18 A. No.

19 Q. Not at all?

20 A. No.

21 Q. Do you know it is referenced a couple  
22 of times in your report that the Model 532 is  
23 what was accompanying the sale of the press  
24 brake back in 1978?

1 A. Yes.

2 Q. And there is even a reference to that  
3 model, and I will quote, "is consistent with  
4 photographs of the subject footswitch after the  
5 accident;" do you see that?

6 A. Yes.

7 Q. What photographs would that be?

8 A. I don't know because the -- this is --  
9 Ulmenstein wrote that particular identification  
10 part, not me.

11 Model numbers have no meaning for me.  
12 I own a whole bunch of Linemasters, and I know  
13 what they look like, but I don't -- if you said  
14 what are the model numbers that you own, and you  
15 know all the research that I have done on this  
16 thing, all the testing, I can't tell you the  
17 model number. I don't pay attention to model  
18 numbers.

19 Q. When you signed this, you read this  
20 whole report; right?

21 A. I did.

22 Q. Did you ever have any discussions about  
23 the accuracy of his model numbers?

24 A. No, I didn't. I have enough trouble

1 brake in '78, who made the decision that this  
2 reference to the 532 is incorrect? How can you  
3 determine it is incorrect if you don't know the  
4 right answer?

5 A. Well, I was under the impression that  
6 the -- that that model number refers to a unit  
7 that has no kick plate.

8 Q. And who told you this?

9 A. I am -- I think that is part of the  
10 discussions with Matt Ulmenstein.

11 Q. And Mr. Hartman, right?

12 A. I don't remember Hartman being involved  
13 in that.

14 Q. You don't remember Mr. Hartman being  
15 there?

16 A. No, not being involved in discussions  
17 of that kind.

18 Q. Okay. Well, who made -- how could  
19 there have been a decision made that the  
20 reference to the 532 was in error if no one  
21 knows what number actually accompanied the  
22 machine in '78?

23 A. It is very simple. If you take a look  
24 at the unit with the kick plate, and you look at

1 used?

2 A. Sure, I do know.

3 Q. Go ahead, tell us.

4 A. It means that somebody that has looked  
5 at the machine could have said, gee, it is time  
6 to replace this, it is wearing out, and they --  
7 I am going to replace this switch and the --  
8 so they replace the switch with something that  
9 they think is either equivalent or better than  
10 the one they had before, but you haven't given  
11 them any example of here is the proper one to  
12 put on.

13 See, I would be upset because the  
14 manual should be showing you what is the proper  
15 switch to put on. This is a design defect case.  
16 And I don't care what, in fact, was supplied. I  
17 care what was designed. And then, you know, if  
18 something was changed later on, you should be  
19 able to look at a manual and say here is the one  
20 we want on there.

21 Q. This is a new opinion that we talked  
22 about preliminarily when we started, it is not  
23 contained in your report. Did you ever raise  
24 any issues with the manual in your report such



1 A. I have no idea.

2 Q. Do you know if it was Avco Lycoming,  
3 the end user of the press brake?

4 A. I have no information about that. I  
5 would like to think that Heim is the one that  
6 made the decision because they are the ones that  
7 should make the decision.

8 Q. You think -- is it your testimony that  
9 the manufacturer of a press brake is in a better  
10 position to choose the type of foot control for  
11 a general purpose I think is how you described a  
12 press brake than the employer that tools and  
13 dies the machine?

14 A. Well, I would put it this way, I would  
15 only add the word "should," he should be in a  
16 better position than his customers for deciding  
17 what is the best -- you know, the best selection  
18 of a foot control.

19 Q. Have you ever testified that it is the  
20 employer, the end user that is in the best  
21 position to choose the appropriate type of foot  
22 control?

23 A. There are -- there are certainly  
24 circumstances where you will have to change the

1 it means that the foot control must not allow  
2 the machine to work unless the operator tells it  
3 to work.

4 The foot control must work the machine  
5 when the operator tells it to work the machine.  
6 And so minimizing the probability of accidental  
7 activation is the responsibility of the designer  
8 of the machine.

9 And if he has 11 scenarios, each one of  
10 which would use a different footswitch, he  
11 should lay that out in his manual. If you have  
12 this circumstances, use one, this circumstances,  
13 use this one.

14 The -- but when he sends out a general  
15 purpose machine, he ought to go ahead and try to  
16 reflect what the industry wants is to minimize  
17 the probability of accidental activation.

18 Q Do you know how many uses Avco Lycoming  
19 put to this press brake in the 20 plus years  
20 they used it without any reported injury?

21 A. No, and I also don't know their  
22 reporting system. I don't know how many  
23 injuries they really had.

24 Q. Do you know of any?

1 product liability work for them at one time.

2 Q. Do you remember doing the product  
3 liability work for Avco?

4 A. Not really, but it is just not an  
5 unfamiliar name for me.

6 Q. Do you know if during that sales  
7 transaction if Heim was ever advised as to what  
8 types of uses Avco Lycoming was intending to use  
9 that press brake for?

10 A. No, but if they were, then the machine  
11 becomes a dedicated press brake, not a general  
12 purpose press brake.

13 Q. I understand that.

14 A. And once you know how it is going to be  
15 used, you have an obligation to put on exactly  
16 the safety devices that are required. And that  
17 is not just to stop with the foot control. If  
18 you know how it is going to be used, you should  
19 be doing a whole point of operation design, foot  
20 controls. Everything should be done by you.  
21 The -- so I am giving Heim the benefit of the  
22 doubt that this is a general purpose machine.

23 A general purpose machine, there is no  
24 way for Heim to know how it is going to be used

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1 so they can't put on point of operation devices.

2 If I knew for one second that they had  
3 information how the thing was being used, my  
4 opinions would be different in this case as I  
5 would hold them totally responsible to do what  
6 the entire industry does, and that is design the  
7 exact point of operation devices for this  
8 machine because it is a dedicated machine and  
9 not a general purpose. But I don't believe for  
10 one second this discussion you and I are having,  
11 you know --

12 Q. What do you mean?

13 A. -- that this is not a general purpose  
14 machine. I don't believe -- I think it is a  
15 general purpose machine.

16 Q. Who said it is not?

17 A. Well, you gave from a hypothetical, you  
18 are talking about the mechanisms by which a  
19 machine no longer becomes a general purpose  
20 machine. It becomes dedicated. It is a big  
21 deal in our business.

22 Q. I hear what point you are making. I  
23 don't know where you got that from that anyone  
24 has suggested this was not a general purpose

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1 involves many considerations;" is that an  
2 accurate statement?

3 A. Yes.

4 Q. "Including a knowledge of operator  
5 movement in the work space"?

6 A. Yes.

7 Q. Would the end user know what --  
8 operator movement in the work space?

9 A. Yes.

10 Q. Do you have any indication or any  
11 evidence to suggest that Heim ever knew of the  
12 operator movement in the work space?

13 A. Well, they know that the -- as a  
14 general purpose machine the -- generally what  
15 kind -- that you are going to have movement in  
16 the -- in the workplace.

17 Q. No, I mean in specifics of what was  
18 going to be done at Avco Lycoming.

19 A. Oh, no, that you are not going to know  
20 that, but this is written for -- this isn't  
21 written for press brakes. This is giving you  
22 information for any machine. And once you know  
23 it is a press brake and a general purpose press  
24 brake, you know a lot about what you have to

1 a press brake. People who have a punch press  
2 operation will normally use a punch press.

3 Q. I know what you are saying normally. I  
4 am not talking about the normal situation  
5 because we don't know what that is related to  
6 this.

7 A. Yes, but I do know the normal  
8 situation. I hold Heim responsible or any  
9 manufacturer of press brake responsible for  
10 sending out a -- controls that are for the  
11 general purpose use of the machine.

12 That doesn't mean you can't cook up  
13 something special that no one has ever heard  
14 about before, but there is a general purpose use  
15 of this machine and that's what you have to  
16 supply.

17 And, remember, here is an article on --  
18 that gives you information to help you make  
19 selections. But this could be used for a  
20 thousand different kinds of machines.

21 And what I asked for in No. 9 is that  
22 when you select the foot control as a  
23 manufacturer of the machine, that you know what  
24 kind of machine you have got.

1           Is this a welding machine? Is this a  
2   sewing machine? Is it an overhead pin router?  
3   What kind of machine have you got? And they  
4   know what they are sending out, a press brake.

5           And a 6-foot press brake is normally  
6   operated with only one person so they don't have  
7   to put dual controls on, so they know that, and  
8   they know it is a general purpose press brake,  
9   so they know that. And to the extent that they  
10   can send out proper footswitches which is  
11   relatively easy to do, they now know how to make  
12   a selection.

13          Q.   If we look at the last item on here you  
14   indicate another important factor consideration  
15   in the proper selection of foot control is the  
16   various anticipated uses of the foot control on  
17   multimode machinery, that would be something  
18   Avco Lycoming or the end user would know; right?

19          A.   That's right.

20          Q.   Do you have any information that Heim  
21   would know what -- the various anticipated uses  
22   of the foot control?

23          A.   Sure they do because they are sending  
24   out a general purpose machine, so they have to

1 assume that this thing is going to see a huge  
2 variety of things that they are working on.

3 Q. Who would be in your opinion,  
4 Professor, who would be in a better position to  
5 know the various anticipated uses of the foot  
6 control on multimode machinery, the press brake  
7 manufacturer or the end user?

8 A. Oh, the press brake manufacturer. This  
9 press brake has been sold to many different  
10 people, and Heim is in a better position to  
11 understand that than any one person who buys it.

12 Q. Have you ever testified --

13 THE VIDEOGRAPHER: Mr. Robinson.

14 MR. ROBINSON: Oh, I am sorry.

15 THE VIDEOGRAPHER: We are off the record at  
16 2:13 p.m.

17 (Recess taken.)

18 THE VIDEOGRAPHER: This is the beginning of  
19 Tape No. 2. Back on the record at 2:16 p.m.

20 BY MR. ROBINSON:

21 Q. Have you ever testified that the end  
22 user would be in the best position to know  
23 the -- I will quote, "the various anticipated  
24 uses of the foot control on multimode

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1 machinery"?

2 A. Absolutely. And this is why it is so  
3 important on point of operation devices. And  
4 there is more to it than that, but it is because  
5 there doesn't exist a single general purpose  
6 safety device, you know, for a machine and every  
7 one of the devices is a Type 4, Type 5. That  
8 means they can -- the wrong safety device can  
9 hurt you.

10 Q. I am referring to your reference in the  
11 foot control section of your --

12 A. Right, right.

13 Q. Okay, so you have testified to that,  
14 that the end user is in the best possible  
15 situation to know -- to make a determination for  
16 the proper selection of a foot control when  
17 determining the -- and addressing the various  
18 anticipated uses of the foot control on  
19 multimode machinery?

20 A. On a general purpose machine, that's  
21 correct.

22 Q. Under lift gate, that's No. 4, do you  
23 see that?

24 A. Yes.

1 Q. No, sir. Well, sure, yes. I think I  
2 know your answer to that.

3 A. When it was sent out to Heim, the  
4 answer is no.

5 Q. Should it have had one at the time of  
6 the incident?

7 A. Yes.

8 Q. Would it be a misuse of the machine not  
9 to have a point of operation safety device?

10 A. It depends on the circumstances because  
11 there are some operations on a press brake where  
12 you can't use any point of operation.

13 Q. I am referring to the one that Tina  
14 Lindquist was using, would it be a misuse of  
15 that press brake to use it as Tina Lindquist was  
16 using it without a point of operation safety  
17 device?

18 A. Based on the information that I have at  
19 my disposal, I think it is a misuse of the  
20 machine not to have a point of operation safety  
21 device.

22 Q. And regardless of the type of foot  
23 control that was in -- that was used, if the  
24 machine -- if the press brake had a point of

1 you can't have the accident.

2 Q. Did you know that this press brake,  
3 that Corry had installed a two-palm button  
4 switch on Heim press brake?

5 A. Yes, and I examined that control.

6 Q. Would the use of that control have  
7 prevented this accident?

8 A. I think so if it was located far enough  
9 from the machine, not super far but --

10 Q. Because it would have precluded her  
11 hands from being in the ram area and would have  
12 required her hands to be on the buttons I take  
13 it is how that works; is that right?

14 A. That's right. I am now -- you know,  
15 the -- the way she has described it. That  
16 doesn't mean a third-party can't do something.  
17 You know, there is other scenarios.

18 Q. Sure. And I am referring to  
19 specifically the manner in which she was  
20 injured.

21 A. Right.

22 Q. The use of that two-palm button switch  
23 would have prevented that?

24 A. I think so.

1 Q. Did you know that the -- that Corry  
2 installed a light curtain on the press brake  
3 after the accident?

4 A. Yes.

5 Q. It is actually shown in the 29, 30  
6 photographs of Exhibit B?

7 A. Yes.

8 Q. And did you know that they continued to  
9 perform this particular part process that Tina  
10 Lindquist was using at the time of her injury  
11 with the use of that light curtain?

12 A. Right.

13 Q. And do you consider -- do you call them  
14 a light curtain?

15 A. Yeah, I do.

16 Q. And is a light curtain a point of  
17 operation safety device?

18 A. Yes.

19 Q. Would the use of that light curtain  
20 have prevented Tina Lindquist's injury?

21 A. With the same proviso, if it is set up  
22 properly --

23 Q. Sure.

24 A. -- then it will do the job.

1 Q. And they set it up properly after the  
2 accident; didn't they?

3 A. I don't know whether they set it up  
4 properly, but they -- that light curtain that I  
5 saw can be set up properly so that you won't  
6 have the accident.

7 They need to do a lot of things. You  
8 have got to make sure just like with the  
9 two-hand controls and the light curtain, you  
10 have to make sure that the Heim press follows  
11 orders so that when you tell it to stop, it, in  
12 fact, will freeze the ram, you know, without too  
13 much drift. And so if you can do that, then  
14 this will -- this can become a component of a  
15 proper two-hand control which could have  
16 prevented the accident.

17 Q. If -- if there was an ungated foot  
18 control on this press brake with appropriate  
19 point of operation safety device, a light  
20 curtain and a -- the use of a two -- strike  
21 that.

22 If there was an appropriate point of  
23 operation safety device and there was an ungated  
24 foot control being used on this Heim press brake

1 being used by Tina Lindquist, would you still  
2 consider the foot control to be defective?

3 A. Oh, certainly, but that doesn't mean  
4 that you will have an accident.

5 Q. Is it your opinion that an ungated foot  
6 control is defective when in use on any press  
7 brake?

8 A. I can't tell you any press brake, but  
9 the -- and I don't think I only want to talk  
10 about the business of the gating because I want  
11 to talk about specifically the Linemaster with  
12 the locking plate and the front gate, the --  
13 that or something equivalent should be on every  
14 single press brake, the -- that's a general  
15 purpose press brake.

16 Q. I know. This case here concerns you  
17 have indicated this one had a locking plate, so  
18 that's not an issue for your testimony. And now  
19 we are talking about the only opinion you have  
20 expressed today being that you think it is  
21 defective because it didn't have a gate. So I  
22 need to focus on that.

23 A. Yeah, but what my problem is -- it is  
24 not much of a problem, but when you only talk

1 about the gate, it makes it sound like if all  
2 you had was a gate I am going to be happy. And  
3 I am not going to be happy if all you have is a  
4 gate.

5 Q. And what is it that you want to be  
6 happy?

7 A. I want to have the locking plate --

8 Q. Okay.

9 A. -- and the gate.

10 Q. Okay.

11 A. So -- and that's what I want on it.

12 Q. Well, you have indicated there is a  
13 locking plate on this.

14 A. There is.

15 Q. So the only thing for this case you  
16 wanted was a gate?

17 A. Right.

18 Q. Okay. So --

19 A. Remember, I am going to have -- if I  
20 live long enough, there will be a lot of people  
21 looking at this record and I don't want them  
22 misreading the record of saying, gee, you said  
23 this thing here and then I have to explain to  
24 them it was implicit that I had the locking

1 plate.

2 I want it to be made clear that in this  
3 particular case because it already has the  
4 locking plate I want the addition of this gate.

5 Q. And what if it did not have the locking  
6 plate, would you --

7 A. Then I am not as happy with the thing  
8 because there are too many applications where  
9 you can ride the pedal and this thing won't --  
10 prevents you from riding the pedal.

11 Q. So would it be safe to say then that if  
12 the foot control did not have a locking plate,  
13 you would -- you would consider -- well, you  
14 don't like to use the word "safe" so let me do  
15 it the other way.

16 Is it your opinion then if the foot  
17 control did not have a locking gate, that  
18 it would -- a locking plate, that you would not  
19 require it to have a gate?

20 A. The -- no, no, I don't think I would  
21 say it that way. The gate helps, but the  
22 locking plate and the gate really moves in the  
23 spirit of the industry that wants you to inhibit  
24 accidental activation.



1 Q. I think you addressed this issue. If  
2 the foot control did not have a locking plate,  
3 would you consider it defective without a gate?  
4 I thought you just said, no, you wouldn't?

5 MR. HARTMAN: He didn't say that.

6 THE WITNESS: I am confused.

7 BY MR. ROBINSON:

8 Q. Remove the locking plate from the foot  
9 control.

10 A. Then I would not consider this to be an  
11 effective system.

12 Q. My question is would you consider it to  
13 be defective without a gate if it did not have  
14 that locking plate?

15 A. Yes, I would.

16 Q. Okay, I think it is now said two  
17 different ways so we have to make sure it is  
18 clear.

19 MR. HARTMAN: Wait, I am going to object  
20 because you are -- you keep characterizing this  
21 witness' testimony and he has been absolutely  
22 clear. And if you want to review the record, he  
23 has answered this multiple times. You might not  
24 like the answer, but he has specifically

1 MR. ROBINSON: Please let me -- please let  
2 me move on here.

3 BY MR. ROBINSON:

4 Q. I want you to assume that the foot  
5 control that Tina Lindquist was using did not  
6 contain a locking plate.

7 A. All right.

8 Q. And you are the expert looking at that  
9 foot control, and that foot control does not  
10 have a gate, everything else is the same.

11 A. Okay.

12 Q. Is the foot control defective?

13 A. Yes.

14 Q. And why is it defective?

15 A. Because it does not properly inhibit  
16 accidental activation.

17 Q. What do you mean by that?

18 A. Well, the standards in the industry use  
19 the word "inhibit." You see, if it was a -- if  
20 it was a foot pedal, they are really strong on  
21 the thing and they will not allow you to have  
22 any chance of accidentally activating this  
23 machine.

24 But knowing how dreadful foot controls

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